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**SUPERINTENDENCY OF INDUSTRY AND TRADE  
DIVISION OF NEW CREATIONS**

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Bogotá, D.C. October 28 of 2004

Doctor

**ALICIA LLOREDA RICAURTE**Attorney-at-Law **CONTINENTAL PET TECHNOLOGIES, INC.****REFERENCE:**

Official Letter No. 10422

File No. 99-5571 *Continental*

Proceeding 002

Event 001

Act 430

Folios 031

As a result of the in-depth exam, carried out based on Article 45 of Decision 486 of the Andean Community Commission, the following is notified:

**1. Documents studied:**

1. For the present study the specification was taken into account, comprised within folios 5 to 80 of the dossier corresponding to the application under study which replaced the one filed at the beginning of the proceeding and its corrections within folios 131 to 161.
2. Also the drawings comprised within folios 177 to 200 of the dossier.

3. The set of claims was taken into account comprising 80 claims found within folios 166 to 176, which replaced the set of claims filed at the beginning of the proceeding. The new set of claims does not extend the scope of the protection originally requested.
4. According to what Articles 9, 10 and 11 of Decision 486 of the Andean Community Commission establish, the present application under study was filed on February 2 of 1999; at the moment of filing priority was claimed. The certified copies of the application whose priority is claimed (US 09/018,217 of February 3 of 1998 and 09/169,439 of October 9 of 1998) appear next to the translation of the claims within folios 202 to 674.

**2. Object of the invention:**

1. Claims 1 to 80 of the application under study refer to: a container for an aqueous liquid comprising a multilayer wall including a layer of an oxygen "scavenging" polymeric composition (sic), wherein the oxygen scavenging composition comprises a polyamide and cobalt "present in an amount of at least 200 ppm in the polyamide" (sic) and a density of the wall adapted to achieve the scavenging of oxygen of the liquid. A multilayer composition is also an object comprising an oxygen scavenging layer and a structural polymeric layer permeable to water and adjacent to the oxygen scavenging layer; a method to scavenge oxygen from an aqueous liquid comprising providing a container that has a wall that comprises an oxygen scavenging layer made of polyamide and cobalt in an amount of at least 200 ppm of polyamide, selecting a wall density, introducing the aqueous liquid in the container.

2. The object of the invention can be classified according to the international classification as B 29 D 9/00.

**3. Clarity of the application:**

1. Article 30 of Decision 486 of the Andean Community Commission establishes: "Claims shall specify the subject matter for which patent protection is sought. They must be stated clearly and concisely and be fully substantiated by the description. Claims may be independent or dependent. A claim shall be independent when it defines the subject matter in respect of which protection is sought without referring to any previous claim. A dependent claim, on the other hand, defines the subject matter for which protection is sought by referring to a prior claim. A claim referring to two or more previous claims is considered a multiple dependent claim."

The set of claims is not clear because of the following reasons:

1. Applicant characterizes several of the claims by the result, but not by the form in which such result was obtained. Claims must characterize a product by the form or constitution of the same, the parts that comprise it and everything that enables to establish how that result was obtained. Similarly, a process must be characterized by its steps, phases, by the equipment and materials that intervene within it. Claims that characterize the object of the same by the results to be reached are not accepted because in this way it would be intended to provoke that the scope of the claims includes not only the solution proposed by applicant, but all the alternatives present or future

that reach that result. Thus, within claim 13 the container is characterized by being transparent. That is one of the results to be obtained, that is the problem that should have been solved. The percent haze that characterizes the object of several of the claims (14 to 16, 78, 79 and 80) is a measure of the transparency, so therefore it is not acceptable either. The term of time during which certain content of oxygen is maintained is a result to be obtained, as well as the velocity to which the content of oxygen is reduced and the limits which the concentration of oxygen reaches. Several claims express such performance: 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 72, 73 and 74. In some other claims the object of the application is also characterized by other type of performance, as is the case of claims 20, 28 and 34, in which the performance of the container or of the method claimed is compared with the performance of the objects known within the state of the art. Within claims 49 to 52 a method is characterized by the result to be obtained, in terms of intrinsic viscosity of the polymer.

2. The expression "density adapted to obtain elimination" does not define the subject matter to be protected.
3. The use of the abbreviation by initials MXD-6 is not clear. Claims must be clear and concise in themselves, then the use of abbreviation by initials is very limited and even if they are supported within the specification, they must be completely clear within the same set of claims.

4. The set of claims includes several claims in which the object of the application is characterized by the use or application to which it is intended to be assigned. As it has been already mentioned within the present concept, the characteristics of the object of a patent invention application must be technical and must be worded in such a way that they define the subject matter to be protected. The subject matter is defined by its components, elements or composition, in the case of the products; or by its steps, phases, stages, in the case of the methods. Thus, within claim 12, the container is characterized by the liquid that it will contain. Within claims 22, 31 a method of scavenging oxygen is characterized by the use assigned to the container that contains the oxygen scavenging layer. Within claim 68 protection is claimed for an article of claim 56. But within claim 56 a method is claimed. In addition, the article is characterized by the use assigned: recipient of food products, bottle or adherent layer for food products. Claim 69 expresses the forms of a recipient and not its technical characteristics.
5. The tests in humid sheet mentioned in some of the claims (72 and 73) should be cited within the context of its methods normalized to enable establishing comparisons with the known art. Said parameters cannot be validated and said claims cannot be accepted.
6. In general, the set of claims presents certain disorder that prevents it from defining clearly and concisely the subject

matter for which protection is sought. First of all, on page 5 of the specification it is indicated that "the invention is based on the discovery that certain treatment with heat in a scavenging polymer may give as result a significant increase in the performance of scavenging oxygen." This is not reflected within the specification because within claim 35 this fact is barely mentioned. Second, the fact that there are 20 independent claims is an indication of the lack of conciseness of the chapter. Many of the characteristics that, judging by the specification, are the most relevant, are repeated once and again.

According to the above, the set of claims does not comply with the requirement of clarity as it is established within Article 30 of Decision 486. Applicant must annex a new set of claims with all the corrections herein required.

#### **4. Evaluation of the unity of invention**

Article 25 of Decision 486 of the Andean Community establishes "A patent application may cover only one invention or a group of interrelated inventions that constitute a single inventive concept."

The present application lacks unity of invention since when wording the set of claims with 20 independent claims, the objects of said independent claims may be different among themselves. This enables to state that it is not possible to identify the inventive common concept.

Applicant must establish one each independent claims for the method and the layer, object of his/her application. Starting from therein, establish dependent claims that extend those claims up to their most complex form.

According to the above, the present application does not comply with the requirement of unity of invention according to Article 25 of Decision 486.

**5. Determination of the state of the art:**

Article 16 of Decision 486 of the Andean Community Commission establishes that: *"The state of the art comprises everything that has been made available to the public by written or oral description, use, marketing, or any other means prior to the filing date of the patent or, where appropriate, of the priority claimed."*

*Solely for the purpose of determining novelty, the contents of a patent application pending before the competent national office and having a filing date or priority application date earlier than the date of the patent or patent priority application under examination, shall likewise be considered part of the state of the art, provided that the said contents are included in the earlier application when published or that the period stipulated in Article 40 has concluded."*

The date to determine the state of the art is February 3 of 1998, keeping in mind the priority claimed.

Having enquired the data bases and the files on which the entity depends, especially under classifications B 29 D 9/00, it was found that before

February 3 of 1998 the documents mentioned on the following table had been published.

No.	Document	Title	Date of Publication
D1	EP 0 520 257 A2	Methods and compositions for oxygen scavenging	1992-12-30
D2	EP 0 520 257 A2	Compositions, articles and methods for scavenging oxygen	1992-10-07
D3	EP 0 301 719	Improvements in and relating to packaging	1988-07-06
D4	EP 0 380 319	Improvements in and relating to packaging	1990-08-01
D5	WO 90/00504	A polymer composition and a method of producing the same	1990-01-25
D6	WO 90/00578	A polymer composition for scavenging oxygen	1990-01-25
D7	WO 96/18685	Oxygen scavenging compositions for multilayer perform and container	1996-06-20
D8	US 5639815	Packaging	1997-06-17
D9	WO 96 18686	Transparent package with aliphatic polyketone oxygen-scavenger	1996-06-20

**6. Evaluation of the requirements of patentability**

Article 14 of Decision 486 of the Andean Community Commission establishes that *"The Member Countries shall grant patents for inventions, whether goods or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable."*



In compliance with Article 14 of Decision 486, the requirements of novelty, inventive level and industrial application were evaluated with the aim of establishing the patentability of the invention claimed in the application under study.

**1. Evaluation of Novelty:**

Article 16 of Decision 486 of the Andean Community Commission establishes: *"An invention may be deemed new when not included in the state of the art. The state of the art comprises everything that has been made available to the public by written or oral description, use, marketing, or any other means prior to the filing date of the patent or, where appropriate, of the priority claimed."*

1. Document D1 refers to compositions to eliminate oxygen comprising polyamide and a transition metal as cobalt. These teachings affect the novelty of the object of the application.
2. Document D2 mentions compositions for packaging that involve unsaturated hydrocarbons and a catalyst with transition metal. This disclosure affects the novelty of the object of the application.
3. Document D3 describes packaging tereftalate polyethylene containing layers of polyamides that may scavenge oxygen together with a composition of transition metal.
4. Document D4 refers to compositions for packaging capable of scavenging oxygen comprising polyamides and cobalt compounds.
5. Document D5 describes compositions for packaging comprising polyamides and cobalt compounds, capable of scavenging oxygen.
6. Document D6 discloses a polymeric composition to scavenge oxygen. The composition comprises polyamides and a cobalt compound.

7. Document D7 discloses multilayer compositions comprising polyamides and a catalyst with a transition metal. The compositions are capable of scavenging oxygen.
8. Document D8 also discloses compositions for packaging capable of scavenging oxygen that contain polyamides and a catalyst with a transition metal.
9. Document D9 discloses compositions of aliphatic polyketones capable of scavenging oxygen.

Thus, judging from the teachings found in the references, the object of the application does not comply with the requirement of novelty established in Article 16 of Decision 486.

## **2. Evaluation of inventive level:**

Article 18 of Decision 486 of the Andean Community Commission establishes that:

*"An invention shall be regarded as involving an inventive step if, for a person in the trade with average skills in the technical field concerned, the said invention is neither obvious nor obviously derived from the state of the art."*

Document D1 discloses the idea of exposing the composition that scavenges oxygen to radiation. Heat is a form of radiation, so a skilled technician would have derived in an evident manner exposing the composition that scavenges oxygen to heat.

Document D2 discloses the idea of using the ethylically unsaturated hydrocarbons together with the catalyst of transition metal in articles of containers of several layers that contain food products.

Document D7 discloses that the containers obtained by their authors are transparent. Then, the task of obtaining transparent multilayer containers with scavengers of oxygen is solved in a manner identical to that claimed.

The concentration of the metal is possible to obtain through routine, then the claims in which a specific concentration is claimed do not have inventive level.

Therefore, the application under study does not comply with the requirement of inventive level established by Article 18 of Decision 486.

### 3. Summary

In conclusion, the requirements of patentability of the present application are affected thus:

No.	Document	Affected claims	Affected requirement
D1	EP 0 520 257 A2	1 to 80	Novelty
			Inventive level
D2	EP 0 520 257 A2	1 to 80	Novelty
			Inventive level
D3	EP 0 301 719	1, 4, 7, 10, 13, 22	Novelty
D4	EP 0 380 319	1, 2, 7, 10, 13, 20, 22, 28	Novelty
D5	WO 90/00504	1, 2, 7, 10, 13, 20, 22, 28	Novelty
D6	WO 90/00578	1, 2, 7, 10, 13, 20, 22, 28	Novelty
D7	WO 96/18685	1 to 80	Novelty
			Inventive level
D8	US 5639815	1, 2, 7, 10, 13, 20, 22, 28	Novelty
D9	WO 96 18686	1, 2, 7, 10, 13, 20, 22, 28	Novelty

Copy of the references mentioned is annexed.

**7. Notice**

In compliance with Article 45 of Decision 486 of the Andean Community Commission, it is indicated that an answer must be given within a term of sixty (60) days counted as of the date of notice of the present communication. In case no answer is given to the present requirement, or if in spite of the answer the obstacles for concession remain, the patent shall be denied.

Notify the present official letter according to what has been provided in numeral 5.2, literal e), of the fifth chapter of the first title of Unique Circular Letter No. 10 of the year 2001.

(signed: illegible)

ALIX CARMENZA CESPEDES DE VERGEL

Head of Division of New Creations

The previous requirement was notified by posting it on the list, on 11 NOV 2004.

TECHNICAL CONCEPT No. 1434	TECHNICAL EXAMINER Code No. 202043
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